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Neighborhood Preservation and Community Development Services

Randolph J. Harris

233 North Barbara Street

Mount Joy, PA 17552

harris233@earthlink.net

Home/Office 717-653-8859

Cell 717-808-2941



April 29, 2004

Troy Brady
Surface Transportation Board
Section of Environmental Analysis
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

Dear Mr. Brady:

**SUBJECT: CONSOLIDATED RAIL CORPORATION
ABANDONMENT EXEMPTION –
Former Enola Branch of the Low Grade Line, Pennsylvania Railroad
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA
Docket No. AB-167 (Sub-No. 1095X)**

**FREEDOM OF INFORMATION ACT REQUEST AND RESPONSE
TO STB NOTICE SERVED APRIL 12, 2004, AND ACCOMPANYING MOA**

I have been retained by Friends of the Atglen-Susquehanna Trail, Inc., as a consultant with regard to the in the Section 106 process relative to the subject case, and am authorized to submit the following on behalf of FAST, in the above-referenced proceedings.

Please be advised that Friends of the Atglen-Susquehanna Trail will not sign the MOA served April 12, 2004, for the reasons addressed in the discussion which follows.

We know of one document involved in the Section 106 process that has not been made public that we believe is subject to release under the Freedom of Information Act. Please see below.

Thank you for including a broad cross section of people and interest groups in the Sec. 106 process, both to receive their general comments, and to include some of those interested persons as Concurring Parties in the MOA. We also appreciate STB's inclusion in the Final MOA additions and modifications that address issues and concerns expressed at the public hearings last year in Quarryville, Lancaster County Pennsylvania.

Based on a reading of the final version of the MOA, and on discussions with various parties here, in Harrisburg and Washington, there seems to be varied and conflicting opinions as to the implications of some of the stipulations of the currently proposed Final MOA, its execution by the signatories, and how that relates to the provisions of the Commonwealth-sanctioned Stipulation Agreement between Norfolk Southern (NS) and the municipalities that are prescribed to take title to the property.

Your response to the following questions and statements of opinion would be appreciated:

According to STB's response to a recent inquiry from FAST, it is our understanding that STB may now intend to lift the Section 106 condition and allow the abandonment to be consummated as soon as the MOA is signed by the signatory (not consulting) parties. To lift the condition prior to the completion of the requirements of the MOA would leave the resource unprotected and open to dissolution and destruction. This is in light of NS intent to convey the property to local municipalities, which conveyance itself has been identified as an adverse effect, along with the intent of the local municipalities to cause various historic components of the resource, including many bridges of the line, to be demolished. In addition, the agreement sanctioned by the state utility commission includes a provision that any/all bridges can be demolished whenever the townships take ownership. Also, the stated intent of some of the municipality parties is to log, sell parcels, and/or otherwise degrade various parts of the historic property. If STB allows abandonment, thus relinquishing jurisdiction, and removes the 106 condition, there will be no enforcement power for the MOA provisions. The only protection for this resource right now is the STB's oversight, the willingness by STB to proceed as the Third Circuit directed, in carrying the 106 process to its conclusion under the jurisdiction of the STB..

The STB abandonment must not be consummated until the historical documentation is completed and reviewed for satisfactory content and scope by the Advisory Council on Historic Preservation and/or the Pennsylvania Historical and Museum Commission (SHPO).

FOIA SUBJECT: We understand that the "representatives resources" that the consultant is supposed to record have not yet been identified by the PA SHPO. If this field review has not been done, how can a consultant hired by NS be given a valid scope of work?

Please supply me with a copy of a Request for Proposals or a Request for Qualifications that Norfolk Southern has issued to consulting service providers in this case. We understand that the railroad has issued such a request sometime during the last quarter of calendar year 2003. FAST agrees to pay any search and copying fees up to \$50. Please advise if compliance with this request is estimated to exceed that amount.

Since the PA SHPO has not completed this review, may we or other persons or organizations with knowledge of the history of the Enola Branch be of assistance? We offer this assistance because of our knowledge both of the resource as a whole and our knowledge of the individual resources known and discussed to date. For instance, there are a number of known physical features that are part of the historical development of the Line which were not known, mentioned or documented prior to the Secretary of the Interior's determination that the entire Line was eligible for listing in the National Register of Historic Places. A tentative list of sites and resources is attached here as an example.

We believe that NS should not be permitted to convey title to the property to the individual townships until all of the 106 requirements have occurred. If STB/SEA, along with the other MOA signatories, by then will have accepted the resources documentation as final and complete, what notice will be given before abandonment occurs?

Relative to post review discoveries, can you describe the process that might be involved in such a consultation? Specifically,

Relative to consultation required under the MOA when a determination is made that a resource will be demolished: we assume that STB and the other signatories will remain involved in the process until this eventuality is foreclosed. Is this understanding of the process accurate? We hope you appreciate our position on this matter. We feel strongly that the Federal agency and SHPO must remain involved through such a point because if there is no such legally binding responsibility, none of the municipalities involved in this case have availed themselves of the authority authorized them by the Commonwealth of Pennsylvania to provide for the protection of historic and cultural resources through administration of their land use ordinances. Therefore, our position remains that federal and state agency protection, to the limited extent that it exists, is the only protection we as concerned citizens can rely on to protect these irreplaceable resources, and to plan for a suitable re-use of materials that might be salvaged after thorough consultation with all interested parties. We are also firm in our interpretation of the Section 106 process and the implementing regulations at Section 800.11(e) of 36 CFR (5) that this is precisely the kind of condition provided for under:

"An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects."

On the issue of "future actions," do you believe that the MOA as currently stated fully addresses all such eventualities by the inclusion on the proposed Data Sheet to be used by the consultant (at (MOA Stipulation 1(B)(3)) which asks the consultant to described the proposed disposition of resources after abandonment.

We believe that for those structures and other resources that will not be demolished or otherwise affected in the short term, this requirement will in essence be asking the individual municipalities to state affirmatively during the recordation process how they intend to dispose of, or otherwise treat or address the resource once under their ownership. Do you agree with this interpretation?

If so, do you agree that this requirement provides the basis of the framework for a consultation to address salvage and re-use of historic resources and their materials pursuant to the above-referenced CFR citation?

Finally, please explain the role of the public and the Concurring Parties, if any, to comment on the final work product, which the consultant will complete as part of the Section 106 process.

Thank you for your efforts on this case and for consideration of my comments.

Sincerely,

COPY
Randolph J. Harris

Attachment A

CC: Victoria Rutson, Chief, Section of Environmental Analysis, STB
Jean Cutler, PA SHPO
Hon. Joseph Pitts, United States Congress
all concurring and signatory parties, as listed by STB

Attachment A

EXAMPLES OF THE KINDS OF HISTORIC AND CULTURAL RESOURCES LIKELY TO BE DISCOVERED DURING POST REVIEW:

The following little known resources have not been fully identified and their potential significance discussed since the Secretary of the Interior's determination that the entire portion of the Enola Branch is NR-eligible.

Here are just a few items that should be reviewed for determination of significance and consultation about effect finding and potential mitigation, including recordation and salvage.

In addition to the obvious stone arch bridges there are the following kinds of historic physical features associated with the Low Grade Line:

WOODLANDS TO BUILDING LOTS? Stands of forest on land purchased by PRR for wood needs on the line. These are supposed to be contiguous "bulges" of land along the line. Where, how many and how big? Mapping and surveys may be needed.

2) INDUSTRIAL ERA RR RUINS: South of the Line in Martic Township between Martic Township Park and Lancaster County Conservancy's Trout Run Nature Preserve, and/or in or near Quarryville Borough, there is believed to be ruins of a sizeable installation of concrete cisterns, catch basins, or similar structures: the remains of a water collection and distribution system for steam locomotive use.

3) CEMETERY: Safe Harbor Grave Yard where many Italian stonemasons are buried, some accident victims of work on the Low Grade.

4) WORKER'S GRAFFITI: Located on the cut stones of many of the arched bridges, some of these inscriptions are supposed to be of high artistic quality, rather than common initials and dates, although these should be documented as well. For instance one local account describes a very detailed rose, with name and date, carved into the south buttress of one of the bridges near the Chester-Lancaster County border.

5) Many small stone arches over minor streams that are like miniature versions of the big bridges over roads.

6) Archeological sites are very likely to be found, particularly in the Manor Township section near the Susquehanna River..

7) What process will be used if additional resources are discovered or encountered?

a) Underground Railroad resources are very prevalent in the eastern Lancaster County area, all along the Line and immediately to the north and south of the Line.

b) Early Ironmaking (approx. 1750-1850) resources are well known in Martic and Conestoga Townships and perhaps other areas as well. Martic Forge and Colemanville are just two. Old iron ore quarries also adjacent in Providence Township.

c) All Lancaster County Farms and Farm Buildings from 1750 - 1850 are NR eligible based on the David Schneider/Historic Preservation Trust Multiple Property Nomination and listing, 1995.